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Attorneys for Defendant

FLUIDMASTER, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DANCO, INC., a Delaware Corporation

Plaintiff,

vs.

FLUIDMASTER, INC., a California
corporation; and DOES 1 THROUGH 5,
inclusive,

Defendants.

Case No. 8:23-cv-01156-AB-DFM

**ANSWER AND AFFIRMATIVE
DEFENSES TO THE FIRST
AMENDED COMPLAINT**

Trial Date: TBD

Judge: The Hon. André Birotte Jr.

1 Defendant Fluidmaster, Inc. (“Defendant” or “Fluidmaster”), by and through
2 undersigned counsel, hereby files its Answer and Affirmative Defenses to the First
3 Amended Complaint (Dkt. No. 35, “FAC”) of Plaintiff Danco, Inc. (“Plaintiff” or
4 “Danco”) as follows:

5 **NATURE AND BASIS OF THE ACTION**¹

6 1. Fluidmaster admits that Danco has brought this action against Fluidmaster
7 but otherwise denies any and all remaining allegations of paragraph 1.

8 2. The allegations of paragraph 2 are not directed to Fluidmaster, and
9 Fluidmaster lacks sufficient knowledge or information to form a belief as to the truth of
10 the remaining allegations of this paragraph and therefore denies any and all remaining
11 allegations of this paragraph.

12 3. Fluidmaster admits that Exhibits A, B, and C attached to the FAC, on their
13 face, appear to be copies of U.S. Patent Nos. 9,139,993 (“the ‘993 Patent”), 9,103,105
14 (“the ‘105 Patent”), and 10,934,698 (“the ‘698 Patent”). Fluidmaster lacks sufficient
15 knowledge or information to form a belief as to the truth of the remaining allegations
16 and therefore denies any and all remaining allegations of paragraph 3.

17 4. Fluidmaster admits that it is a manufacturer, supplier, seller, and distributor
18 of various plumbing supply and repair products and otherwise denies any and all
19 remaining allegations of paragraph 4.

20 5. Fluidmaster admits that it manufactures and sells various toilet fill valves
21 under its brand, including the Fluidmaster models PRO45U, 400H, 400AH, and 400H-
22 002 (“the Accused Products”) and otherwise denies any and all remaining allegations
23 of paragraph 5. Fluidmaster has discontinued model PRO45HR.

24 6. Fluidmaster admits that it offers for sale the Accused Products in the
25 United States through retailers and distributors, including Home Depot and Ferguson,
26 and otherwise denies any and all remaining allegations of paragraph 6.

27
28 ¹ The headings in the FAC are reproduced herein for the convenience of the reader. To
the extent such headings include or infer allegations, they are denied.

1 7. Fluidmaster denies the allegations of paragraph 7.

2 **PARTIES**

3 8. The allegations of paragraph 8 are not directed to Fluidmaster, and
4 Fluidmaster lacks sufficient knowledge or information to form a belief as to the truth of
5 the remaining allegations of this paragraph and therefore denies any and all remaining
6 allegations of this paragraph.

7 9. Fluidmaster admits it is a California corporation with its principal place of
8 business at 30800 Rancho Viejo Road, San Juan Capistrano, California 92675 and that
9 its registered agent for service of process is Robert Adolf Andersonschoepe.
10 Fluidmaster denies any and all remaining allegations of paragraph 9.

11 **JURISDICTION**

12 10. Fluidmaster admits that this is an action for alleged patent infringement
13 arising under the patent laws of the United States, Title 35, United States Code and that
14 this Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and
15 1338(a). Fluidmaster denies any and all remaining allegations of paragraph 10.

16 11. For the purposes of this action, Fluidmaster admits that this Court has
17 personal jurisdiction over Fluidmaster.

18 12. For the purposes of this action, Fluidmaster admits that venue is proper in
19 this District under 28 U.S.C. § 1391 and 1400(b). Fluidmaster denies any and all
20 remaining allegations of paragraph 12.

21 **DANCO AND ITS PATENT RIGHTS**

22 13. The allegations of paragraph 13 are not directed to Fluidmaster, and
23 Fluidmaster lacks sufficient knowledge or information to form a belief as to the truth of
24 the remaining allegations of this paragraph and therefore denies any and all remaining
25 allegations of this paragraph.

26 14. The allegations of paragraph 14 are not directed to Fluidmaster, and
27 Fluidmaster lacks sufficient knowledge or information to form a belief as to the truth of
28 the remaining allegations of this paragraph and therefore denies any and all remaining

1 allegations of this paragraph.

2 15. The allegations of paragraph 15 are not directed to Fluidmaster, and
3 Fluidmaster lacks sufficient knowledge or information to form a belief as to the truth of
4 the remaining allegations of this paragraph and therefore denies any and all remaining
5 allegations of this paragraph.

6 16. Fluidmaster admits that the '105 Patent, titled "Toilet Fill Valve," states
7 that it was issued on August 11, 2015. Fluidmaster lacks sufficient knowledge or
8 information to form a belief as to the truth of the remaining allegations of paragraph 16
9 and therefore denies any and all remaining allegations of this paragraph.²

10 17. Fluidmaster admits that the '993 Patent, titled "Toilet Fill Valve," states
11 that it was issued on September 22, 2015. Fluidmaster lacks sufficient knowledge or
12 information to form a belief as to the truth of the remaining allegations of paragraph 17
13 and therefore denies any and all remaining allegations of this paragraph.³

14 18. Fluidmaster admits that Exhibit C attached to the FAC, on its face, appears
15 to be a copy of the '698 Patent. Fluidmaster admits that the '698 Patent, titled "Toilet
16 Valve," states that it was issued on March 2, 2021. Fluidmaster lacks sufficient
17 knowledge or information to form a belief as to the truth of the remaining allegations
18 of paragraph 18 and therefore denies any and all remaining allegations of this paragraph.

19 19. The allegations of paragraph 19 are not directed to Fluidmaster, and
20 Fluidmaster lacks sufficient knowledge or information to form a belief as to the truth of
21 the remaining allegations of this paragraph and therefore denies any and all remaining
22 allegations of this paragraph.

23 **FLUIDMASTER'S [ALLEGED]INFRINGING CONDUCT**

24 20. Fluidmaster admits that it manufactures and sells the Accused Products
25 under its brand and otherwise denies any and all remaining allegations of paragraph 20.
26 Fluidmaster has discontinued model PRO45HR.

27
28 ² It appears that the '105 Patent is attached as Exhibit B (not Exhibit A) to the FAC.
³ It appears that the '993 Patent is attached as Exhibit A (not Exhibit B) to the FAC,

1 21. Fluidmaster admits that the Accused Products are available for retail sale
2 and distribution at various nationwide retailers, wholesalers and distributors and
3 otherwise denies any and all remaining allegations of paragraph 21.

4 22. Fluidmaster admits that it was aware of the existence of the Danco Fill
5 Valve Patents and otherwise denies any and all remaining allegations of paragraph 22.

6 23. Fluidmaster denies the allegations of paragraph 23 of the FAC.

7 24. Fluidmaster denies the allegations of paragraph 24 of the FAC.

8 25. Fluidmaster denies the allegations of paragraph 25 of the FAC.

9 26. Fluidmaster denies the allegations of paragraph 26 of the FAC.

10 27. Fluidmaster denies the allegations of paragraph 27 of the FAC.

11 **COUNT I - [ALLEGED] DIRECT INFRINGEMENT OF THE DANCO FILL**
12 **VALVE PATENTS BY FLUIDMASTER**

13 28. Fluidmaster repeats and realleges its responses to paragraphs 1 through 27
14 as if fully set forth herein.

15 29. Fluidmaster denies the allegations of paragraph 29 of the FAC.

16 30. Fluidmaster admits that Exhibits D, E, and F attached to the FAC, on their
17 face, appear to be exemplary preliminary claim charts alleging infringement of claim 1
18 of each of the Danco Fill Valve Patents and otherwise denies any and all remaining
19 allegations of paragraph 30.

20 31. Fluidmaster denies the allegations of paragraph 31 of the FAC.

21 32. Fluidmaster denies the allegations of paragraph 32 of the FAC.

22 33. Fluidmaster denies the allegations of paragraph 33 of the FAC.

23 34. Fluidmaster denies the allegations of paragraph 34 of the FAC.

24 35. Fluidmaster denies the allegations of paragraph 35 of the FAC.

25 36. Fluidmaster denies the allegations of paragraph 36 of the FAC.

**COUNT II - [ALLEGED] INDUCED INFRINGEMENT OF THE DANCO FILL
VALVE PATENTS**

37. Fluidmaster repeats and realleges its responses to paragraphs 1 through 36 as if fully set forth herein.

38. Fluidmaster denies the allegations of paragraph 38 of the FAC.

39. Fluidmaster denies the allegations of paragraph 39 of the FAC.

40. Fluidmaster denies the allegations of paragraph 40 of the FAC.

41. Fluidmaster denies the allegations of paragraph 41 of the FAC.

42. Fluidmaster denies the allegations of paragraph 42 of the FAC.

43. Fluidmaster denies the allegations of paragraph 43 of the FAC.

44. Fluidmaster denies the allegations of paragraph 44 of the FAC.

**COUNT III - [ALLEGED] CONTRIBUTORY INFRINGEMENT OF THE
DANCO FILL VALVE PATENTS**

45. Fluidmaster repeats and realleges its responses to paragraphs 1 through 44 as if fully set forth herein.

46. Fluidmaster denies the allegations of paragraph 46 of the FAC.

47. Fluidmaster admits that it has provided its distributors and customers with the Accused Products and otherwise denies any and all remaining allegations of paragraph 47.

48. Fluidmaster denies the allegations of paragraph 48 of the FAC.

49. Fluidmaster denies the allegations of paragraph 49 of the FAC.

50. Fluidmaster denies the allegations of paragraph 50 of the FAC.

51. Fluidmaster denies the allegations of paragraph 51 of the FAC.

52. Fluidmaster denies the allegations of paragraph 52 of the FAC.

53. Fluidmaster denies the allegations of paragraph 53 of the FAC.

54. Fluidmaster denies the allegations of paragraph 54 of the FAC.

1 **PRAYER FOR RELIEF**

2 Fluidmaster denies that Danco is entitled to any requested relief whatsoever as
3 prayer or otherwise. To the extent not expressly addressed above, Fluidmaster denies
4 the factual allegations in the FAC.

5 **DEMAND FOR TRIAL BY JURY**

6 Danco's demand for a trial by jury is a legal averment that Fluidmaster neither
7 admits nor denies.

8 **AFFIRMATIVE DEFENSES**

9 Without admitting or acknowledging that it bears any burden of proof as to any
10 of the following or their respective elements, Defendant alleges on information and
11 belief the following Affirmative Defenses:

12 **FIRST DEFENSE**

13 **(Invalidity)**

14 Each asserted claim of the patents-in-suit are invalid for failure to comply with
15 one or more requirements of Title 35, United States Code, including without limitation
16 the provisions of 35 U.S.C. §§ 101, 102, 103 and/or 112, and the rules, regulations, and
17 laws pertaining thereto.

18 **SECOND DEFENSE**

19 **(Prosecution History Estoppel)**

20 Upon information and belief, by reason of prior art and the proceedings in the
21 U.S. Patent and Trademark Office during the prosecution of the applications that led to
22 the issuance of the patent-in-suit, including, without limitation, amendments,
23 representations, concessions, and admissions made by or on behalf of the applicant,
24 Danco is estopped from asserting that the patents-in-suit cover and include any
25 Fluidmaster products or services alleged to infringe the patents-in-suit.

26 **THIRD DEFENSE**

27 **(Limitation on Damages)**

28 Plaintiff's claims for recovery are barred, in whole or in part, by 35 U.S.C. § 287.

FOURTH DEFENSE

(Limitation on Damages)

Under the provisions of 35 U.S.C. § 286, Plaintiff is precluded from seeking recovery for any of Fluidmaster's alleged infringing acts occurring more than six years before the filing of the FAC.

FIFTH DEFENSE

(Action Including an Invalid Claim and Limitation on Recovery of Costs)

Plaintiff's prayer for costs is barred, in whole or in part, by Plaintiff's failure to disclaim any invalid claims under 35 U.S.C. § 288.

PRAYER FOR RELIEF

WHEREFORE, Fluidmaster denies that Danco is entitled to any relief, including the relief requested in its Prayer for Relief, Fluidmaster respectfully requests that the Court enter a judgment against Danco and in favor of Fluidmaster as follows:

- A. That Danco takes nothing and be denied relief whatsoever;
- B. That the FAC be dismissed on the merits and with prejudice;
- C. That the claims of the patent-in-suit be declared to be not infringed by Fluidmaster;
- D. That the asserted claims of the patents-in-suit be declared to be invalid and/or unenforceable;
- E. That Fluidmaster be awarded its costs incurred in connection with this action;
- F. That this case be deemed exceptional pursuant to 35 U.S.C. § 285, such that Fluidmaster be awarded reasonable attorneys' fees; and
- G. That Fluidmaster be awarded such other and further relief as the Court may deem just and proper.

JURY DEMAND

Fluidmaster demands a trial by jury as to all claims and issues properly triable thereby.

Dated: November 15, 2023

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By: /s/ Mark D. Litvack

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